COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION TO DETERMINE WHETHER AN ADEQUATE MEANS FOR DELIVERY OF GAS IS AVAILABLE TO BURKESVILLE GAS COMPANY, INC.	))))	CASE NO. 90-290

O R D E R

This case is before the Commission on a complaint by Bill Nickens against Burkesville Gas Company, Inc. ("Burkesville Gas") and Ken-Gas of Kentucky, Inc. ("Ken-Gas"). This case was first established by Order entered October 3, 1990 to investigate whether Ken-Gas had an adequate and reliable supply of gas to supply the needs of its customers for the 1990-1991 heating season. Burkesville Gas was made a party to the proceeding by reason of its application in Case No. 90-294[1] to approve the transfer to it of the assets of Ken-Gas. A hearing was conducted before the Commission on November 28, 1990, and on April 3, 1991, the Commission found that Burkesville Gas, as the successor to Ken-Gas, had made satisfactory arrangements to secure an adequate supply of gas for its customers and ordered the investigation closed. However, on July 3, 1991, pursuant to a request by Bill Nickens, the owner of a pipeline through which Ken-Gas and

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1 Case No. 90-294, The Application of Burkesville Gas Company, Inc. for Approval of the Transfer and Sale of Ken-Gas of Kentucky, Inc. and Application of Burkesville Gas Company, Inc. for an Order Authorizing the Creation and Issuance of $1,300,000 of Long-Term Instruments of Indebtedness.

Burkesville Gas obtain their gas, the investigation was reopened to determine whether access to the gas supply was threatened. Bill Nickens was joined as a party to the proceeding. A hearing was held before the Commission on August 20, 1991, at which Burkesville Gas and Bill Nickens appeared but neither party was represented by counsel.

FINDINGS OF FACT

This case involves a long-standing dispute between Bill Nickens, the owner of the gas pipeline, and Ken-Gas, a gas utility serving residential, commercial, and industrial customers in the city of Burkesville and in Cumberland County. By reason of its plans to acquire Ken-Gas's distribution system, Burkesville Gas has become involved in the dispute. The acquisition, however, has not been completed and Ken-Gas remains the owner of the system.

The primary source of supply for Ken-Gas is Centran Corporation ("Centran"). Centran delivers the gas to Ken-Gas through a Texas Eastern pipeline to a point where it interconnects with a pipeline owned by Kentucky Energy Transmission, Inc. ("KET"). At that point, title to the gas passes to Ken-Gas and the gas is transported the remaining distance to Burkesville for Ken-Gas by KET. Both Ken-Gas and KET are Kentucky corporations owned by Ken Turner or members of his family.

The point where the Texas Eastern pipeline interconnects with the KET pipeline is approximately 21 miles from the city of Burkesville. KET, however, does not have a continuous pipeline from the point of interconnection to the city and must use a five-mile section of another pipeline in order to complete the movement of gas to the city.

The section of the other pipeline used by KET is part of a pipeline known as the Fort Knox line. That line is 22 1/2 miles long and was originally constructed as a gathering system for gas wells in the area. The Fort Knox line was constructed in five sections, three of which are four miles long, one is four and one half miles long, and one is five miles long. The five-mile section is the one used by KET and is wholly owned by Bill Nickens. The other four sections were built by Bill Nickens in four separate partnerships with private investors, each partnership being the owner of one section. Bill Nickens claims that the partnerships were dissolved in 1986 and he became the sole owner of the entire line. That claim is not supported by the record and is apparently being disputed by some of the investors who are asserting judgment liens against the entire line, including the five-mile section being used by KET.

The basis for Bill Nickens' complaint in this proceeding is that he is not being compensated by Ken-Gas or KET for the use of his line. Consequently, Bill Nickens has asked KET to stop using the line and has threatened to shut it down. If KET is unable to use the five-mile section of pipeline, it will not be able to transport the gas purchased from Centran to the city of Burkesville, thereby jeopardizing the ability of Ken-Gas or Burkesville Gas to meet the needs of their customers.

Burkesville Gas became involved in the controversy with Bill Nickens as a result of a joint application with Ken-Gas to approve the transfer to it of the gas distribution system from Ken-Gas to Burkesville Gas. Burkesville Gas is a Kentucky corporation that was formed by Consolidated Financial Resources, Inc. ("Consolidated"), a financial corporation whose principal business is to originate tax exempt bonds, and by Ken-Gas. Consolidated owns 51 percent of Burkesville Gas and Ken-Gas owns the remaining 49 percent.

On February 21, 1991, in Case No. 90-294, the Commission approved the transfer of the system and authorized Burkesville Gas to issue long-term bonds in the principal amount of $1,300,000. Of that amount, Burkesville Gas was authorized to expend $953,572 to acquire the gas distribution system and a backup propane injection system; $267,000 for expansion of the system to new customers; and $79,428 for bond issuance costs and miscellaneous expenses. While not specifically stated in either the February 21, 1991 Order in Case No. 90-294 or the Order entered earlier in this proceeding on April 3, 1991, it is apparent from both Orders, based upon representation made by Consolidated and by Ken-Gas in each of the proceedings, that at the time they were entered, the Commission concluded that the controversy with Bill Nickens had been resolved and the threat he presented to the supply of gas for Burkesville's consumers had been removed. When Bill Nickens notified the Commission that the controversy remained, this case was reopened.

The conclusion of the Commission was based on two agreements executed on November 26, 1990 between Burkesville Gas and Bill Nickens. Burkesville Gas had sought the agreements to obtain Bill

Nickens' cooperation in obtaining Commission approval of the transfer and the issuance of the bonds. Accordingly, the first agreement was intended to settle all claims that Bill Nickens had against Ken-Gas for the past use of the section of the Fort Knox line owned by Bill Nickens. Under the terms of that agreement, Burkesville Gas agreed to pay Bill Nickens, in settlement of his claim, the sum of $9,480 upon approval of the application in Case No. 90-294 and further agreed to pay a like sum of $9,480 in exchange for Bill Nickens' rights against Ken-Gas and its owner, Ken Turner. However, Burkesville Gas is only obligated to pay the second $9,480 if it is able to collect the claim from Ken Turner. Since approval of the application in Case No. 90-294, Bill Nickens has been paid the first $1,000 of the total amount owed.

Under the second agreement, Bill Nickens leased the entire Fort Knox line to Burkesville Gas, including the five-mile segment that KET uses to transport gas to the city of Burkesville. The term of the lease is 20 years beginning upon approval of Burkesville Gas's application in Case No. 90-294 and completion of the bond issue. Although not stated in the document, the parties intended the lease agreement to be temporary and to remain only in effect until a more detailed agreement could be negotiated. The lease agreement, however, never went into effect because one of the conditions upon which it is contingent, namely the issuance of bonds, has never occurred. When the bonds are issued, Burkesville Gas admits that it will be bound to perform its obligations under the lease agreement.

Despite approval of its application in Case No. 90-294, Burkesville Gas is unwilling and has no immediate intention of accepting the assets of Ken-Gas or of issuing the bonds. Burkesville Gas is unwilling to complete the transfer because there is litigation against Bill Nickens involving the Fort Knox line that was brought by investors in that line. The litigation, in effect, places a cloud on Bill Nickens' title such that Burkesville Gas cannot be assured that the lease agreement gives it the right to use the pipeline.

Another reason is the poor financial condition of Ken-Gas. Ken-Gas is currently in default on some of its outstanding obligations. Unless those problems are resolved, investors to whom the bonds will be marketed will be reluctant to purchase them. Therefore, there is no immediate prospect of the transfer being completed.

Until the transfer of ownership of Ken-Gas's assets can be made, Burkesville Gas proposes to lease the gas system from Ken-Gas so that it can take over the operation. Burkesville Gas or Ken-Gas or both, it is not clear who, would also borrow $180,000 from the Monticello Banking Company. The loan, which would be secured by the Small Business Administration, would be used to expand the system to serve approximately 100 new residential customers, 30 new commercial customers, and three new industrial customers. In addition, Burkesville Gas proposes to set aside, in a reserve account, funds derived from its operating revenues equal to five cents per Mcf for all gas transported through the five-mile section of the Fort Knox line. This is a different method of payment than what is provided in the lease agreement between Burkesville Gas and Bill Nickens. Under the lease agreement, Burkesville Gas will initially be required to pay the sum of $2,400 per month for the use of the line with escalation clauses increasing the lease payments each year over the term of the lease. Furthermore, the amount proposed to be set aside is less than the 20 cents per Mcf that was proposed by Bill Nickens in place of the flat monthly rate.

Although not raised in the July 3, 1991 Order reopening the case, a problem concerning the contract with Centran was brought to light during the course of the hearing. The contract permits Centran to interrupt the deliveries of gas to Ken-Gas and presumably to its successor, Burkesville Gas. At the first hearing before the Commission on November 28, 1990, Ken-Gas represented to the Commission that if its source of supply from Centran was interrupted, it had a propane air injection system that would be able to provide about a 10-day supply to its customers. During the 10-day period, if gas service was not restored, Ken-Gas further represented that it could then request an emergency supply of natural gas from an interstate gas pipeline through the Federal Energy Regulatory Commission, or it could purchase an additional supply of propane. However, at the August 20, 1991 hearing, it became apparent that the propane injection system had not been constructed and would not be constructed until the bonds were issued. Although there may be gas wells in the Burkesville and Cumberland County area, there is no assurance that they can serve the needs of gas customers in that area.

Consequently, if Centran declines to deliver gas to Ken-Gas or Burkesville Gas for any period of time, there may be no alternative source available.

CONCLUSIONS OF LAW

Although the Fort Knox line was originally constructed as a gathering system, at least the five-mile section of that line is now being used, with Bill Nickens' knowledge, to transport natural gas for distribution to the public. Therefore, Bill Nickens is a transporting "utility" subject to the jurisdiction of the Commission and is required to comply with the regulations and statutes relating to gas utilities. As a utility, Bill Nickens may not terminate the use of his pipeline by KET, Ken-Gas, or Burkesville Gas without Commission consent and, in accordance with KRS 278.160, is required to file with this Commission a schedule of its rates and conditions for service. Failure to comply with these requirements or any other requirements pertaining to utilities may subject Bill Nickens to the penalties prescribed by KRS 278.990 and KRS 278.992.

Similarly, Ken-Gas, as the owner of the gas distribution system serving customers in the city of Burkesville and surrounding Cumberland County, and Burkesville Gas, as the lessor of that system, are likewise "utilities" subject to the Commission's jurisdiction. As utilities under its jurisdiction, the Commission is required by KRS 278.280(1) to ensure that Ken-Gas and Burkesville Gas provide adequate service to the customers of the Ken-Gas system. To ensure adequate service is provided, the following action should be taken:

1. Burkesville Gas and Ken-Gas, within 20 days from the date of this Order, should provide the Commission with evidence that they have secured an uninterruptible supply of natural gas sufficient to meet the maximum estimated requirements of the customers to be supplied through the gas distribution system owned by Ken-Gas.

2. Bill Nickens, as a transporting utility, should be directed to maintain the five-mile section of the Fort Knox line for use in the transportation of gas to the city of Burkesville.

3. The lease agreement between Bill Nickens and Burkesville Gas of the Fort Knox transmission line, insofar as it pertains to the five-mile section of that line and establishes an agreed rental for its use, should be filed by Bill Nickens as a special contract within 20 days of the date of this Order.

4. Burkesville Gas, as the lessee of the five-mile section of the Fort Knox line, should establish an escrow account in a banking institution in this state and deposit in that account, subject to disbursement only by Order of this Commission or a court of competent jurisdiction, the sum of $2,400 per month beginning October 1, 1991.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the Findings of Fact and Conclusions of Law are hereby adopted by the Commission and the parties are directed to comply therewith.

Done at Frankfort, Kentucky, this 31st day of October, 1991.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director